



General Assembly

Amendment

February Session, 2018

LCO No. 5483



Offered by:

SEN. FONFARA, 1st Dist.

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To: Senate Bill No. **417**

File No. 627

Cal. No. 388

"AN ACT CONCERNING THE DEPARTMENT OF REVENUE SERVICES' RECOMMENDATIONS REGARDING STATE TAXATION AND COLLECTION."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective July 1, 2018*) (a) The Commissioner of
4 Revenue Services may charge fees sufficient to cover the reasonable
5 expenses incurred by the Department of Revenue Services in the
6 performance of an administrative function, including, but not limited
7 to, preparing an account reconstruction, preparing a letter of good
8 standing, preparing a certified copy of a tax return and certifying a
9 software program or a software provider. No such fee shall exceed one
10 hundred dollars for the performance of a given administrative
11 function.

12 (b) Any person subject to a fee imposed under subsection (a) of this
13 section may request, in writing, that the commissioner waive such fee.
14 The commissioner may waive such fee if the commissioner finds,
15 based on information provided by such person, that imposition of the
16 fee would result in undue hardship for such person. The commissioner
17 shall promptly inform such person of the granting or rejection of such
18 requested waiver. The decision of the commissioner shall be final and
19 not subject to further review or appeal.

20 Sec. 2. Subsection (a) of section 12-829 of the general statutes is
21 repealed and the following is substituted in lieu thereof (*Effective July*
22 *1, 2018*):

23 (a) (1) On or after January 1, 2012, but prior to July 1, 2018, when
24 any person redeems a winning lottery ticket worth five thousand
25 dollars or more at the central office of the Connecticut Lottery
26 Corporation, the Connecticut Lottery Corporation shall check the
27 name and other identifying information of such person against a list of
28 taxpayers who are delinquent, supplied by the Commissioner of
29 Revenue Services.

30 (2) On or after July 1, 2018, when any person redeems a winning
31 lottery ticket worth two thousand dollars or more at the central office
32 of the Connecticut Lottery Corporation, the Connecticut Lottery
33 Corporation shall check the name and other identifying information of
34 such person against a list of taxpayers who are delinquent, supplied by
35 the Commissioner of Revenue Services.

36 Sec. 3. Subdivision (12) of subsection (a) of section 12-407 of the 2018
37 supplement to the general statutes is repealed and the following is
38 substituted in lieu thereof (*Effective October 1, 2018*):

39 (12) "Retailer" includes:

40 (A) Every person engaged in the business of making sales at retail or
41 in the business of making retail sales at auction of tangible personal
42 property owned by the person or others;

43 (B) [~~every~~] Every person engaged in the business of making sales for
44 storage, use or other consumption or in the business of making sales at
45 auction of tangible personal property owned by the person or others
46 for storage, use or other consumption;

47 (C) [~~every~~] Every operator, as defined in subdivision (18) of this
48 subsection;

49 (D) [~~every~~] Every seller rendering any service described in
50 subdivision (2) of this subsection;

51 (E) [~~every~~] Every person under whom any salesman, representative,
52 peddler or canvasser operates in this state, or from whom such
53 salesman, representative, peddler or canvasser obtains the tangible
54 personal property that is sold;

55 (F) [~~every~~] Every person with whose assistance any seller is enabled
56 to solicit orders within this state;

57 (G) [~~every~~] Every person making retail sales from outside this state
58 to a destination within this state [and not maintaining a place of
59 business in this state] who engages in regular or systematic solicitation
60 of sales of tangible personal property in this state (i) by the display of
61 advertisements on billboards or other outdoor advertising in this state,
62 (ii) by the distribution of catalogs, periodicals, advertising flyers or
63 other advertising by means of print, radio or television media, or (iii)
64 by mail, telegraphy, telephone, computer data base, cable, optic,
65 microwave, Internet or other communication system, for the purpose
66 of effecting retail sales of tangible personal property, provided such
67 person has gross receipts of at least two hundred fifty thousand dollars
68 and made [~~one~~] two hundred or more retail sales from outside this
69 state to destinations within this state during the twelve-month period
70 ended on the September thirtieth immediately preceding the monthly
71 or quarterly period with respect to which such person's liability for tax
72 under this chapter is determined;

73 (H) [~~any~~] Any person owned or controlled, either directly or

74 indirectly, by a retailer engaged in business in this state which is the
75 same as or similar to the line of business in which such person so
76 owned or controlled is engaged;

77 (I) [any] Any person owned or controlled, either directly or
78 indirectly, by the same interests that own or control, either directly or
79 indirectly, a retailer engaged in business in this state which is the same
80 as or similar to the line of business in which such person so owned or
81 controlled is engaged;

82 (J) [any] Any assignee of a person engaged in the business of leasing
83 tangible personal property to others, where leased property of such
84 person which is subject to taxation under this chapter is situated
85 within this state and such assignee has a security interest, as defined in
86 subdivision (35) of subsection (b) of section 42a-1-201, in such
87 property;

88 (K) [every] Every person making retail sales of items of tangible
89 personal property from outside this state to a destination within this
90 state [and not maintaining a place of business in this state] who repairs
91 or services such items, under a warranty, in this state, either directly or
92 indirectly through an agent, independent contractor or subsidiary;
93 [and]

94 (L) [every] Every person making sales of tangible personal property
95 or services through an agreement with another person located in this
96 state under which such person located in this state, for a commission
97 or other consideration that is based upon the sale of tangible personal
98 property or services by the retailer, directly or indirectly refers
99 potential customers, whether by a link on an Internet web site or
100 otherwise, to the retailer, provided the cumulative gross receipts from
101 sales by the retailer to customers in the state who are referred to the
102 retailer by all such persons with this type of an agreement with the
103 retailer, is in excess of two hundred fifty thousand dollars during the
104 preceding four quarterly periods ending on the last day of March,
105 June, September and December; and

106 (M) Any marketplace facilitator, as defined in section 5 of this act.

107 Sec. 4. Subdivision (15) of subsection (a) of section 12-407 of the 2018
108 supplement to the general statutes is repealed and the following is
109 substituted in lieu thereof (*Effective October 1, 2018*):

110 (15) (A) "Engaged in business in the state" means and, to the extent
111 not prohibited by the Constitution of the United States, includes, but
112 shall not be limited to, the following acts or methods of transacting
113 business: (i) Selling in this state, or any activity in this state in
114 connection with selling in this state, tangible personal property for use,
115 storage or consumption within the state; (ii) engaging in the transfer
116 for a consideration of the occupancy of any room or rooms in a hotel,
117 lodging house or bed and breakfast establishment for a period of thirty
118 consecutive calendar days or less; (iii) rendering in this state any
119 service described in any of the subparagraphs of subdivision (2) of this
120 subsection; (iv) maintaining, occupying or using, permanently or
121 temporarily, directly or indirectly, through a subsidiary or agent, by
122 whatever name called, any office, place of distribution, sales or sample
123 room or place, warehouse or storage point or other place of business or
124 having any representative, agent, salesman, canvasser or solicitor
125 operating in this state for the purpose of selling, delivering or taking
126 orders; (v) notwithstanding the fact that retail sales are made from
127 outside this state to a destination within this state, [and that a place of
128 business is not maintained in this state,] engaging in regular or
129 systematic solicitation of sales of tangible personal property in this
130 state by the display of advertisements on billboards or other outdoor
131 advertising in this state, by the distribution of catalogs, periodicals,
132 advertising flyers or other advertising by means of print, radio or
133 television media, or by mail, telegraphy, telephone, computer data
134 base, cable, optic, microwave, Internet or other communication system,
135 for the purpose of effecting retail sales of tangible personal property,
136 provided [one] at least two hundred fifty thousand dollars of gross
137 receipts are received and two hundred or more retail sales from
138 outside this state to destinations within this state are made during the
139 twelve-month period ended on the September thirtieth immediately

140 preceding the monthly or quarterly period with respect to which
141 liability for tax under this chapter is determined; (vi) being owned or
142 controlled, either directly or indirectly, by a retailer engaged in
143 business in this state which is the same as or similar to the line of
144 business in which the retailer so owned or controlled is engaged; (vii)
145 being owned or controlled, either directly or indirectly, by the same
146 interests that own or control, either directly or indirectly, a retailer
147 engaged in business in this state which is the same as or similar to the
148 line of business in which the retailer so owned or controlled is
149 engaged; (viii) being the assignee of a person engaged in the business
150 of leasing tangible personal property to others, where leased property
151 of such person is situated within this state and such assignee has a
152 security interest, as defined in subdivision (35) of subsection (b) of
153 section 42a-1-201, in such property; (ix) notwithstanding the fact that
154 retail sales of items of tangible personal property are made from
155 outside this state to a destination within this state, [and that a place of
156 business is not maintained in this state,] repairing or servicing such
157 items, under a warranty, in this state, either directly or indirectly
158 through an agent, independent contractor or subsidiary; and (x) selling
159 tangible personal property or services through an agreement with a
160 person located in this state, under which such person located in this
161 state, for a commission or other consideration that is based upon the
162 sale of tangible personal property or services by the retailer, directly or
163 indirectly refers potential customers, whether by a link on an Internet
164 web site or otherwise, to the retailer, provided the cumulative gross
165 receipts from sales by the retailer to customers in the state who are
166 referred to the retailer by all such persons with this type of agreement
167 with the retailer is in excess of two hundred fifty thousand dollars
168 during the four preceding four quarterly periods ending on the last
169 day of March, June, September and December.

170 (B) A retailer who has contracted with a commercial printer for
171 printing and distribution of printed material shall not be deemed to be
172 engaged in business in this state because of the ownership or leasing
173 by the retailer of tangible or intangible personal property located at the

174 premises of the commercial printer in this state, the sale by the retailer
175 of property of any kind produced or processed at and shipped or
176 distributed from the premises of the commercial printer in this state,
177 the activities of the retailer's employees or agents at the premises of the
178 commercial printer in this state, which activities relate to quality
179 control, distribution or printing services performed by the printer, or
180 the activities of any kind performed by the commercial printer in this
181 state for or on behalf of the retailer.

182 (C) A retailer not otherwise [a retailer] engaged in business in the
183 state who purchases fulfillment services carried on in this state by a
184 person other than an affiliated person, or who owns tangible personal
185 property located on the premises of an unaffiliated person other than a
186 marketplace facilitator, as defined in section 5 of this act, performing
187 fulfillment services for such retailer, shall not be deemed to be engaged
188 in business in [the] this state. For purposes of this subparagraph, (i)
189 persons are affiliated persons with respect to each other where one of
190 such persons has an ownership interest of more than five per cent,
191 whether direct or indirect, in the other, or where an ownership interest
192 of more than five per cent, whether direct or indirect, is held in each of
193 such persons by another person or by a group of other persons who
194 are affiliated persons with respect to each other, [. For purposes of this
195 subparagraph,] and (ii) "fulfillment services" means services that are
196 performed by a person on its premises on behalf of a purchaser of such
197 services and that involve the receipt of orders from the purchaser of
198 such services or an agent thereof, which orders are to be filled by the
199 person from an inventory of products that are offered for sale by the
200 purchaser of such services, and the shipment of such orders outside
201 this state to customers of the purchaser of such services.

202 (D) A retailer not otherwise [a retailer] engaged in business in this
203 state that participates in a trade show or shows at the convention
204 center, as defined in subdivision (3) of section 32-600, shall not be
205 deemed to be engaged in business in this state, regardless of whether
206 the retailer has employees or other staff present at such trade shows,
207 provided the retailer's activity at such trade shows is limited to

208 displaying goods or promoting services, no sales are made, any orders
209 received are sent outside this state for acceptance or rejection and are
210 filled from outside this state, and provided further that such
211 participation is not more than fourteen days, or part thereof, in the
212 aggregate during the retailer's income year for federal income tax
213 purposes.

214 Sec. 5. (NEW) (*Effective October 1, 2018*) (a) As used in this section:

215 (1) "Marketplace facilitator" means any person who (A) facilitates
216 retail sales of at least two hundred fifty thousand dollars during the
217 prior twelve-month period by marketplace sellers by providing a
218 forum that lists or advertises tangible personal property subject to tax
219 under chapter 219 of the general statutes or taxable services, including
220 digital goods, for sale by such marketplace sellers, (B) directly or
221 indirectly through agreements or arrangements with third parties,
222 collects receipts from the customer and remits payments to the
223 marketplace sellers, and (C) receives compensation or other
224 consideration for such services;

225 (2) "Marketplace seller" means any person who has an agreement
226 with a marketplace facilitator regarding retail sales of such person,
227 whether or not such person is required to obtain a permit under
228 section 12-409 of the general statutes; and

229 (3) "Forum" means a physical or electronic place, including, but not
230 limited to, a store, a booth, an Internet web site, a catalog or a
231 dedicated sales software application, where tangible personal property
232 or taxable services are offered for sale.

233 (b) A marketplace facilitator shall be considered the retailer of each
234 sale such facilitator facilitates on its forum for a marketplace seller.
235 Each marketplace facilitator shall (1) be required to collect and remit
236 for each such sale any tax imposed under section 12-408 of the general
237 statutes, (2) be responsible for all obligations imposed under chapter
238 219 of the general statutes as if such marketplace facilitator was the
239 retailer of such sale, and (3) in accordance with the provisions of

240 subdivision (3) of section 12-426 of the general statutes, keep such
241 records and information as may be required by the Commissioner of
242 Revenue Services to ensure proper collection and remittance of said
243 tax.

244 (c) Any marketplace seller who is a retailer with a valid permit
245 issued under section 12-409 of the general statutes shall not be
246 required to collect the tax imposed under chapter 219 of the general
247 statutes for a particular sale and shall not include the receipts from
248 such sale in its taxable receipts for purposes of its return under section
249 12-414 of the general statutes, if: (1) The marketplace seller can show
250 that such sale was facilitated by a marketplace facilitator (A) with
251 whom the marketplace seller has a contract that explicitly provides
252 that the marketplace facilitator will collect and remit sales tax on all
253 taxable sales such facilitator facilitates for such seller, or (B) from
254 whom such seller requested and received in good faith a properly
255 completed certificate of collection certifying that such facilitator is
256 registered to collect sales tax and will collect sales tax on all taxable
257 sales by such seller and facilitated by such facilitator; and (2) any
258 failure of such facilitator to collect the proper amount of tax for such
259 sale was not the result of such seller providing such facilitator with
260 incorrect information. The commissioner shall administer the
261 provisions of this subsection in a manner consistent with section 12-
262 410 of the general statutes and as if the language of said section had
263 expressly referred to a certificate of collection under this section.

264 (d) Any purchaser of tangible personal property or taxable services
265 who overpaid sales or use tax to a marketplace facilitator may submit a
266 claim for refund with the commissioner in accordance with the
267 provisions of section 12-425 of the general statutes, in such form and
268 manner as the commissioner prescribes. No such purchaser shall have
269 a cause of action against a marketplace facilitator for the recovery of
270 any such overpayment under any provision of the general statutes.

271 Sec. 6. (NEW) (*Effective October 1, 2018*) (a) As used in this section,
272 "marketplace facilitator" and "marketplace seller" have the same

273 meanings as provided in section 5 of this act.

274 (b) For a taxable sale occurring on or after October 1, 2018, but on or
275 before December 31, 2019, if a marketplace facilitator incurs liability for
276 failure to collect the tax due under chapter 219 of the general statutes
277 on a taxable sale, the commissioner shall limit such liability in
278 accordance with the provisions of subdivision (1) of subsection (c) of
279 this section if such facilitator can show to the satisfaction of the
280 Commissioner of Revenue Services that (1) such facilitator and the
281 marketplace seller are not affiliated persons, as described in
282 subparagraph (C) of subdivision (15) of subsection (a) of section 12-407
283 of the general statutes, as amended by this act, (2) the failure to collect
284 sales tax due was not due to an error in sourcing the sale, and (3) such
285 sale occurred on or before December 31, 2019. The commissioner shall
286 prescribe the form and manner in which a marketplace facilitator may
287 request the relief in this subsection.

288 (c) (1) The commissioner shall limit the liability of a marketplace
289 facilitator who the commissioner deems to have satisfied the
290 provisions of subdivisions (1) to (3), inclusive, of subsection (b) of this
291 section by reducing the total amount of tax due under chapter 219 of
292 the general statutes on taxable sales facilitated by such facilitator and
293 sourced to this state by five per cent, reducing the interest due by a
294 corresponding amount and waiving any associated penalties.

295 (2) The commissioner may limit the liability of a marketplace seller
296 who incurs liability for tax due under chapter 219 of the general
297 statutes on a taxable sale that was made through a marketplace
298 facilitator to the same extent as provided under subdivision (1) of this
299 subsection, provided the commissioner deems the provisions of
300 subdivisions (1) to (3), inclusive, of subsection (b) of this section to be
301 satisfied.

302 Sec. 7. (NEW) (*Effective October 1, 2018*) (a) As used in this section:

303 (1) "Referral" or "refer" means the transfer by a referrer of a potential
304 purchaser to a seller who advertises or lists tangible personal property

305 for sale on or in the referrer's medium; and

306 (2) "Referrer" means any person who (A) contracts or otherwise
307 agrees with a seller to list or advertise for sale one or more items of
308 tangible personal property by any means, including an Internet web
309 site and a catalog, provided such listing or advertisement includes the
310 seller's shipping terms or a statement of whether the seller collects
311 sales tax, (B) offers a comparison of similar products offered by
312 multiple sellers, (C) receives commissions, fees or other consideration
313 in excess of one hundred twenty-five thousand dollars during the prior
314 twelve-month period from a seller or sellers for such listings or
315 advertisements, (D) refers, via telephone, Internet web site link or
316 other means, a potential customer to a seller or an affiliated person of a
317 seller, as described in subparagraph (C) of subdivision (15) of
318 subsection (a) of section 12-407 of the general statutes, as amended by
319 this act, and (E) does not collect payments from the customer for the
320 seller. For purposes of this subdivision, "shipping terms" does not
321 mean a seller's mere mention of general shipping costs in the seller's
322 own listing or advertisement.

323 (b) Each referrer shall, to the extent not prohibited by the
324 Constitution of the United States:

325 (1) Post a conspicuous notice on or in such referrer's medium that
326 informs consumers (A) that sales or use tax is due from Connecticut
327 purchasers on certain purchases, (B) that the seller might not collect
328 and remit sales tax on a purchase, (C) that Connecticut requires
329 Connecticut purchasers to file a use tax return if sales tax is not
330 imposed at the time of the sale by the seller, (D) of the instructions for
331 obtaining additional information from the Department of Revenue
332 Services regarding the remittance of sales and use taxes on purchases
333 made by Connecticut purchasers, and (E) that such notice is being
334 provided pursuant to this section;

335 (2) Provide a quarterly notice to each seller to whom such referrer
336 transferred during the previous calendar year a potential purchaser

337 located in this state that contains (A) a statement that Connecticut
 338 imposes a sales or use tax on sales made to Connecticut purchasers, (B)
 339 a statement that a seller making sales to Connecticut purchasers must
 340 collect and remit sales and use taxes to the Department of Revenue
 341 Services, and (C) instructions for obtaining additional information
 342 regarding the Connecticut sales and use taxes from said department.

343 (c) Not later than January 31, 2020, and annually thereafter, each
 344 referrer shall submit a report electronically, in a form and manner
 345 prescribed by the Commissioner of Revenue Services, to the
 346 commissioner that contains (A) the name and address of each seller
 347 who received a notice pursuant to subsection (b) of this section in the
 348 calendar year immediately preceding, and (B) the name and address of
 349 each seller for which the referrer knows that such seller (i) listed or
 350 advertised such seller's tangible personal property on or in such
 351 referrer's medium, and (ii) collected and remitted Connecticut sales
 352 and use taxes."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2018</i>	New section
Sec. 2	<i>July 1, 2018</i>	12-829(a)
Sec. 3	<i>October 1, 2018</i>	12-407(a)(12)
Sec. 4	<i>October 1, 2018</i>	12-407(a)(15)
Sec. 5	<i>October 1, 2018</i>	New section
Sec. 6	<i>October 1, 2018</i>	New section
Sec. 7	<i>October 1, 2018</i>	New section